

PUBLIC



Australian Government
Anti-Dumping Review Panel

ADRP Decision No. 152

Certain Copper tube exported from the Socialist
Republic of Vietnam

July 2022

<https://www.adreviewpanel.gov.au>

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Abbreviations

Term	Meaning
Act	<i>Customs Act 1901</i>
ADA	WTO Anti-Dumping Agreement
ADC	Anti-Dumping Commission
ADN	Anti-Dumping Notice
AUD	Australian Dollar
Appellate Body	Appellate Body of the World Trade Organisation
CTMS	Cost to Make and Sell
Commissioner	The Commissioner of the Anti-Dumping Commission
Dumping Duty Act	<i>Customs Tariff (Anti-Dumping) Act 1975</i>
FOB	Free on board
GAAP	Generally accepted accounting principles
Goods	The goods the subject of TER 580 (also referred to as the goods under consideration)
Hailiang Australia	Hailiang Australia Pty Ltd
Hailiang HK	Hong Kong Hailiang Metal Trading Limited
Hailiang Vietnam	Hailiang (Vietnam) Copper Manufacturing Company Limited
IDD	Interim dumping duty
Injury examination period	from 1 January 2017

INV 557	ADC Investigation No. 557 in respect of copper tube exported from the People's Republic of China and the Republic of Korea
INV 580	ADC Investigation No. 580 in respect of copper tube exported from the Socialist Republic of Vietnam
LME	London Metals Exchange
MM Kembla	Metal Manufactures Pty Ltd trading as "MM Kembla"
Manual	Dumping and Subsidy Manual December 2021
MCC	Model control code
Minister	Minister for Industry and Science
NIP	Non-injurious price
OD	Outside diameter
Original Investigation period	1 January 2020 to 31 December 2020
CIO Regulation	<i>Customs (International Obligations) Regulation 2015</i>
Review Panel	Anti-Dumping Review Panel
Reviewable Decision	The decision of the Commissioner of the Anti-Dumping Commission made on 4 March 2022 under s.269TDA(1)(b)(i) and s.269TDA(1)(b)(ii) of the <i>Customs Act 1901</i> in respect of copper tube exported from the Socialist Republic of Vietnam.
SCM	Agreement on Subsidies and Countervailing Measures
SEF 580	Statement of Essential Facts published on 29 October 2021
TER 580	The report published in relation to the termination of the alleged dumping investigation of copper tube exported from the Socialist Republic of Vietnam, dated 4 March 2022.
Vietnam	The Socialist Republic of Vietnam
WA	Weighted average

WT	Wall thickness
WTO	The World Trade Organization
Zhejiang Hailiang	Zhejiang Hailiang Copper Co., Ltd

Summary

1. This is a review of decisions of the Commissioner of the Anti-Dumping Commission (“the Commissioner”) to terminate the Investigation (“INV 580”) in relation to Copper Tube exported from the Socialist Republic of Vietnam (“Vietnam”) in so far as it related to:
 - Hailiang (Vietnam) Copper Manufacturing Company Limited (“Hailiang Vietnam”) in accordance with section 269TDA(1)(b)(i) of the *Customs Act 1901* (“the Act”); and
 - uncooperative exporters of the goods from Vietnam in accordance with section 269TDA(1)(b)(ii) of the Act (“Reviewable Decisions”).
2. The effect of the Reviewable Decisions was to terminate INV 580 in its entirety.
3. The applicant for the review was Metal Manufactures Pty Ltd trading as “MM Kembla” (“MM Kembla”).
4. For the reasons set out in this report, I consider that the decisions to terminate INV 580 under s.269TDA(1)(b)(i) and (ii), were not the correct or preferable decisions and are revoked.

Introduction and Background

5. On 10 February 2021, MM Kembla lodged an application to the Commissioner alleging that the Australian industry had experienced material injury caused by copper tube exported to Australia from Vietnam at dumped prices. MM Kembla is the sole Australian manufacturer of copper tube.
6. Having considered the application the Commissioner decided not to reject the application. On 22 March 2021, the Commissioner initiated INV 580 into the alleged dumping of copper tube from Vietnam.
7. The investigation period for the purpose of assessing dumping in INV 580 was 1 January 2020 to 31 December 2020 (“the original investigation period”). The injury analysis period was from 1 January 2017 (“the injury analysis period”).

8. The Commissioner must terminate an investigation if dumping margins are negligible, negligible volumes of dumping are found, or the export causes negligible injury.¹
9. The Anti-Dumping Commission (“ADC”) published a Statement of Essential Facts on 29 October 2021 (“SEF 580”).
10. The Commissioner published a notice terminating INV 580 on 4 March 2022.² It was stated in the notice that as a result of the ADC’s investigation, the Commissioner was satisfied that:
 - there was no dumping by Hailiang Vietnam, of any of the goods in the investigation period; and
 - there was dumping by uncooperative exporters of the goods from Vietnam, but the dumping margin by those exporters when expressed as a percentage of the export price worked out under s.269TACB, was less than 2 per cent in the investigation period.
11. The reasons for the Reviewable Decisions made by the Commissioner resulting in the termination of INV 580 in its entirety were set out in ADC Termination Report No. 580 (“TER 580”) dated 4 March 2022.
12. MM Kembla applied under s.269ZZO of the Act for a review of the decision of the Commissioner to terminate the investigation pursuant to s.269TDA(1). The application was made in accordance with the requirements set out in s.269ZZQ and within the relevant 30 day period required by the Act.³
13. Notification of the proposed review, as required by s.269ZZRC(1), was published on the Review Panel’s website on 21 April 2022.
14. The Senior Member of the Anti-Dumping Review Panel (Review Panel) directed in writing that the Review Panel be constituted by me in accordance with s.269ZYA of the Act.

¹ Section 269TDA of the Act.

² ADN No. 2022/024.

³ Section 269ZZP.

Conduct of the Review

15. In accordance with s.269ZZT of the Act, if the application is not rejected under ss.269ZZQA, 269ZZR or 269ZZRA, the Review Panel must either affirm the reviewable decision or revoke it. If a decision is revoked, the Commissioner must publish a statement of essential facts as soon as practicable, after which the investigation of the application will resume pursuant to s.269ZZT. This decision takes effect as if it were a decision made by the Commissioner.⁴
16. In undertaking the review, s.269ZZT(4) of the Act requires the Review Panel to only take into account information that was before the Commissioner when the Commissioner made the reviewable decision, subject to certain exceptions.⁵
17. The Review Panel may also have regard to further information obtained at a conference held under s.269ZZRA or further information provided by the Commissioner upon request of the Review Panel pursuant to s.269ZZRB of the Act.
18. If a conference is held under s.269ZZRA of the Act, then the Review Panel may have regard to further information obtained at the conference to the extent that it relates to the information that was before the Commissioner, and to conclusions based on that information.⁶ No conferences were held during the course of this review.
19. It should be noted that this Review No. 152 relating to TER 580, is closely linked to Review No.'s 146 – 150 relating to ADC Termination Report No. 557 dated 12 November 2021 ("TER 557"). In both investigations to which the reviews relate, being INV 557 and INV 580: (i) MM Kembla is the sole Australian industry applicant; (ii) the goods under consideration are identical, being certain copper tube; (iii) one of the cooperating exporters in each investigation belongs to the same corporate group, being Zhejiang Hailiang Copper Co., Ltd (in China) in INV 557 and Hailiang Vietnam (in Vietnam) in INV 580, and both those exporters export the goods through a related trading company in Hong Kong, being Hong Kong Hailiang Metal Trading Limited ("Hailiang HK"). Further, MM Kembla was also the applicant in both

⁴ Section 269ZZV.

⁵ See ss.269ZZRA(2) and ZZRB(2).

⁶ Section 269ZZRB(2); ADRP Report No 24.

Review No.'s 146 - 150 and Review No. 152 with a number of the grounds (and sub-grounds) of review and arguments relating thereto, being the same or very similar. There were also overlapping submissions to the ADC in INV 557 and INV 580 and a number of submissions in INV 580 made reference to submissions made to the ADC in INV 557, and were incorporated by reference into submissions relating to INV 580. Similarly in this Review No. 152 there are references to submissions made to the ADC during INV 557 and to further information obtained in conferences held under s.269ZZRA or in response to the Notice under s.269ZZRB in Review No.'s 145 – 150, in so far as it related to Review No. 152.

20. Subsection 269ZZT(5) of the Act requires the Review Panel to make its decision within 60 days after the publication of the notice under subsection 269ZZRC(3), or such longer period allowed by the Minister in writing because of special circumstances. The due date for issuance of this decision was 20 June 2022. The due date for the decision in Review No.'s 145 – 150, as extended by the Minister because of special circumstances, was 8 June 2022. MM Kembla requested an opportunity to comment on further information provided by the ADC during a conference held on 7 June 2022 during Review No.'s 145 - 150, the day before the decision was due. Since the Review Panel intended to rely on the further information in making its decision, the final decision was delayed in order to hold a further conference under s.269ZZRA of the Act, to provide MM Kembla with the opportunity to comment on the further information. ADRP Report No.'s 145 – 150 was issued to the Commissioner on 24 June 2022 and published on the Review Panel's website on 4 July 2022. Since there were overlapping grounds (and sub-grounds) of review and similar arguments in Review No. 152, the final decision was also delayed until after publication of ADRP Report No. 146 – 150.
21. In conducting this review I have had regard to the applications (including documents submitted with the applications). I have also had regard to TER 580 and documents and information relevant to the review which was referenced in TER 580, including SEF 580 and to documents referenced in SEF 580. I have also had regard to related information obtained at conferences, and conclusions reached at the conferences based on related information. For the reasons referred to above, I have also had regard to documents and information related to Review 152 that was referenced in TER 557 and in Reviews 145 – 150, as well as to related information

obtained at conferences held under s.269ZZRA during Review No's 145 – 150, and conclusions reached at such conferences based on related information.

Grounds of Review

22. The grounds of review relied upon by the applicant, which the Review Panel accepted in the s.269ZZRC notice, are as follows:
1. The Commissioner's decision concerning the selection of invoice date for fair comparison purposes, is not the correct or preferable decision;
 2. The Commissioner's decision concerning the determination of normal values without the appropriate adjustments, is not the correct or preferable decision, in particular in relation to:
 - i. model control codes and international standards;
 - ii. Cleaning and capping costs;
 - iii. Copper volatility; and
 - iv. drawing thin.
 3. The Commissioner's decision concerning arm's length sales between Hailiang Hong Kong and Hailiang Australia, is not the correct or preferable decision;
 4. The Commissioner's decision involving the determination of material injury, is not the correct or preferable decision.

Consideration of Grounds

Ground 1: Selection of invoice date decision for fair comparison purposes is not correct or preferable

23. I should note that a number of MM Kembla's arguments under this ground of review refer to claims for adjustments under s.269TAC(8) of the Act, in respect of copper

price volatility. Copper price volatility may have some relevance to determining the 'date of sale' for the purposes of the comparison between normal value and export price, which I will address in my consideration of this ground of review. However, I will not address the substantive arguments relating to adjustments for copper volatility, as they are more properly dealt with under Ground 2 (iii) relating to adjustment for copper volatility.

MM Kembla's Arguments

24. MM Kembla contends that the Commissioner's decision with respect to the selection of invoice date for fair comparison purposes was not the correct or preferable decision.
25. MM Kembla referred to the Dumping and Subsidy Manual – December 2021 ("the Manual") which discusses "establishing the date of sale", noting that the ADC, "will normally use the date of invoice as it best reflects the material terms of sale". MM Kembla noted that the Manual also states that where, "a date other the date of invoice better reflects the date of sale", the ADC "will examine the evidence provided".⁷ MM Kembla contended that the Commissioner failed to give due consideration to the evidence provided by MM Kembla regarding the volatility of copper pricing that is priced differently for domestic and export sales when date of invoice is used for fair comparison purposes.
26. MM Kembla contended that it had demonstrated that copper pricing is more relevantly (and accurately) aligned at order date where the terms of sale are well established. MM Kembla stated that it had demonstrated the volatility of copper pricing and how comparing a domestic and export sale at invoice date would likely result in substantially different raw material copper input prices for the copper tube.
27. MM Kembla acknowledged that the ADC's methodology is considered reasonable if the same copper price time basis is used in the domestic and export sales, but submitted that in reality however, this was not the case. MM Kembla submitted that given the variability of the copper commodity price and the exposure risk this creates when domestic and export orders are priced (at date of order), the industry accepted practice of hedging copper prices at the time of order, resulted in an

⁷ Section 15.3 of the Manual, pages 66 – 67.

alignment of the cost of copper for the manufacturer and what the customer pays for the copper component of the pricing model.

28. MM Kembla submitted that importantly, the order date provided for a more comparable date for domestic and export sales where the cost of the raw material input copper (that accounts for up to 95 per cent of the cost of copper tube) is known for both domestic and export sales (whereas sales compared at invoice date have different agreed copper prices).
29. MM Kembla submitted that during the period of the investigation the London Metal Exchange (“LME”) copper price fell by nearly [REDACTED] per cent from the January 2020 high of US\$ [REDACTED] to the March low of US\$ [REDACTED]. According to MM Kembla, the price then rebounded to a new high of US\$ [REDACTED] in December, an increase of [REDACTED] per cent from the low.⁸ MM Kembla submitted that this extreme volatility in copper pricing invariably impacted the difference between pricing dates of the copper cost and invoice date for domestic and export sales and would have had a material impact on the comparative quarterly weighted average export price and quarterly weighted average domestic sale, demonstrating a misalignment between the invoice price and product cost. MM Kembla contended that the Commissioner’s failure to accurately assess the volatility in the copper price during the investigation period contributed to an understatement of the exporter’s actual costs to make and sell the exported goods and also understated the actual margin of dumping for exports to Australia by Hailiang Vietnam.
30. MM Kembla submitted that a more appropriate basis for fair comparison purposes was available to the Commissioner and more accurately reflected the commercial terms and industry practices for copper tube sales involved a transaction by transaction comparison of domestic and export prices utilising order date (as per s.269TACB(3)).
31. MM Kembla submitted that the movement in copper price from the date of order placement to invoice can be substantial and, given the longer lead time (up to three months) for export sales, it is not reasonable to compare domestic sales with export sales at date of invoice due to the volatility in the copper price that evolves over this period. MM Kembla submitted that it was not disputing that in some instances there

⁸ Confidential Attachment 2 to MM Kembla’s application for review, page 2.

the level of variability and volatility in copper pricing, and as such the conclusion is statistically wrong.

- should not have undertaken a comparison of quarterly weighted average normal values and export prices which in the circumstances was not appropriate.
- should have undertaken a comparison of export sales prices with domestic prices at order date and where a difference in copper price existed, should have made an adjustment under s.269TAC(8) to address differences in copper pricing between the two markets.
- due to the differences in copper pricing evident as demonstrated by MM Kembla, should have followed the more appropriate basis for fair comparison of examining on a transaction by transaction comparison utilising order date and the same copper benchmark price.

34. MM Kembla submitted that it demonstrated in its response to SEF 580 dated 18 November 2021, that the terms of sale were more accurately reflected on the date of order placement, for copper tube that is exported to Australia. It submitted that at that time the terms of the contract can be correctly compared and contrasted with domestic sales that reflect a similar copper input price (and are not subject to the variations in copper pricing that are evident when invoice date is used for fair comparison purposes).

35. MM Kembla contended that the Commissioner's decision to use invoice date for fair comparison purposes is therefore not the correct or preferable decision.

ADC's Position

36. In response to MM Kembla's submissions on this issue during INV 580, the ADC referred to the Manual which provides that where a claim is made that a date other than the date of invoice better reflects the date of sale, the ADC will examine the evidence provided. The ADC stated that for such a claim to succeed it would first be necessary to demonstrate that the material terms of sale were, in fact, established by this other date. Further, the ADC stated, in doing so, the evidence would have to

address whether price and quantity were subject to any continuing negotiation between the buyer and the seller after the claimed contract date.¹⁰

37. The ADC stated that it had reviewed the evidence before it, including sales confirmation and final invoices for Hailiang Vietnam, and was satisfied that there were no material differences in the determination of price for export and domestic sales. Moreover, the ADC stated that the sales order allows for, and the evidence demonstrates that sales quantities and prices differ between the date of order placement and the date of invoice, in samples verified by the ADC. According to the ADC, this reflected that the material terms of sale were resolved on the invoice date.
38. The ADC stated that it had also considered the timing difference between the order placement date and invoice date for both the domestic and export sales, and the evidence before it was that the timing difference between these dates for exported copper tube was only marginally higher than that for domestic sales, and this difference is not many months, as submitted by MM Kembla.¹¹ Therefore, the ADC did not consider that domestic and export sales for the exporters under investigation were made on different terms.
39. The ADC also stated that it did not consider fluctuations in copper prices in the investigation period to be evidence of order placement date better reflecting the date of sale.
40. The ADC stated that it did not consider that MM Kembla provided the requisite evidence to demonstrate that the order placement date is the date which better reflects the date of sale. Further, the ADC referred to statements in MM Kembla's application that income, impacts of discounts, rebates, sales returns, warranty claims and intercompany transfers were not recognised until the date of despatch, in its own accounting records. The ADC stated that it verified Hailiang Vietnam's accounting records and was satisfied that Hailiang Vietnam followed a similar approach in recording transactions at the invoice date. The ADC stated that this further supported its finding that the invoice date was the appropriate date of sale

¹⁰ TER 580, page 24.

¹¹ The ADC referred to its analysis at Confidential Attachment 1 to TER 580.

for both domestic and export sales used in the calculation of dumping margins for Hailiang Vietnam.¹²

Consideration

41. Both MM Kembla and the ADC referred to the Manual's discussion of "establishing the date of sale", noting that the ADC, "will normally use the date of invoice as it best reflects the material terms of sale", but that when, "a date other the date of invoice better reflects the date of sale", the ADC "will examine the evidence provided".¹³ The Manual reflects the practice approach of the ADC and is considered to be aligned with WTO practice, which is not disputed by MM Kembla. The ADC stated that in order for a claim to succeed, "a date other the date of invoice better reflects the date of sale", it would be necessary to demonstrate that the material terms of sale were, in fact, established by this other date. The ADC, with reference to the Manual, stated that the evidence would have to address whether price and quantity were subject to any continuing negotiation between the buyer and the seller after the claimed contract date. This suggests an evidentiary burden on the party claiming that a date other the date of invoice better reflects the date of sale, being MM Kembla. This burden would be particularly challenging when the party making the claim is not a party to the contract or the relevant transactions, as in the present situation.
42. The ADC noted that MM Kembla did not provide it with actual evidence to substantiate its claim in this regard. The ADC stated that, nonetheless, it reviewed the evidence before it, including sales confirmation and final invoices for Hailiang Vietnam. I consider it to be appropriate for the ADC to review the evidence on its own initiative since MM Kembla, while submitting its own information relating to contractual terms and sales in support of its arguments, did not have access to the to the confidential details of the contractual relationship and documentation relating to the exporter's sales. WTO rules and jurisprudence provide that while interested parties claiming adjustments are required to provide evidence in support of and to quantify their claim, there is also an affirmative information-gathering burden on the investigating authority to ensure a "fair comparison", and Article 2.4 of the WTO

¹² See Section 4.3.1.11 of TER 580, pages 26 – 27.

¹³ See Section 15.3 of the Manual, pages 66 – 67.

Anti-Dumping Agreement (“ADA”) requires that the authority, in ensuring a fair comparison “shall not impose an unreasonable burden of proof” on the parties in question claiming the adjustment.¹⁴ After conducting a review of the evidence, the ADC concluded that it did not consider that the evidence demonstrated that the order placement date is the date which better reflected the date of sale.

43. Having reviewed the relevant documents and submissions, and Confidential Attachment 1 to TER 580, I agree with the ADC and do not consider that it has been demonstrated that the material terms of sale for the exporters were established by the order date, as contended by MM Kembla. The following factors detract from order confirmation being considered to be the ‘date of sale’ instead of the invoice date:

- In both the sample export sales and domestic sales in Confidential Attachment 1 to TER 580, there were instances where the invoice price changed slightly from confirmation date, indicating that material terms were not agreed at order confirmation date.
- In both the sample export sales and domestic sales in Confidential Attachment 1 there were instances where the sales confirmation had quantity specified but no price, also indicating that material terms were not agreed at order confirmation date.
- In the sample export sales there were instances where confirmation and invoice had the price in different currencies, further indicating that sales terms were not set until date of invoice.
- According to the ADC, statements in MM Kembla’s application that income, impacts of discounts, rebates, sales returns, warranty claims and intercompany transfers were not recognised until the date of despatch, in its own accounting records, further supported its finding that the invoice date was the appropriate date of sale for both domestic and export sales. The

¹⁴ See WTO Panel Report, *Egypt - Definitive Anti-Dumping Measures on Steel Reinforcing bar from Turkey* (WT/DS211/R) at paragraph 7.352; Appellate Body Report in *United States – Anti-Dumping Measures on Certain Hot Rolled Steel Products from Japan* (WT/DS184/AB/R) paragraph 178; Panel Report, *European Communities – Anti-Dumping Duties on Malleable Cast Iron Tube or Pipe Fittings from Brazil* (WT/DS219/R), at paragraph 7.157 and 7.158.

ADC stated that it verified Hailiang Vietnam's accounting records and was satisfied that Hailiang Vietnam followed a similar approach in recording transactions at the invoice date.

44. A review of the Confidential Attachment 1 also confirmed the correctness of the ADC's finding that the number of days between sales order date and invoice date is substantially less than the 3 months submitted by MM Kembla. This detracted from MM Kembla's claim that there is a mismatch between export and domestic sales regarding the volatility of copper pricing that is priced differently for domestic and export sales when date of invoice is used as the date of sale. I also agree with the ADC's statement that it did not consider fluctuations in copper prices in the investigation period to be "evidence" of order placement date better reflecting the date of sale.
45. For the reasons discussed above, I consider that the Commissioner's decision with respect to the selection of invoice date as the 'date of sale' for fair comparison purposes, was the correct or preferable decision.

Ground 2: Determination of normal values without the appropriate adjustments was not correct or preferable

46. MM Kembla submitted that the Commissioner's decision as to the determination of normal values for Hailiang Vietnam was incorrect and not the preferred decision. It stated that the ADC rejected MM Kembla's representations concerning the determination of normal values for copper tube as the Commissioner failed to take account of:
 - the impact of the applicable International Standards on domestic sales versus export sales, that result in different costs to make copper tube in the domestic and export markets respectively;
 - the exporter's practice to draw thin in copper tube production for sales on the domestic market, resulting in a lower CTM than applies for exported goods;
 - actual capping and cleaning costs for refrigeration copper tube models; and

- hedging costs that impact domestic and export selling prices for copper tube.
47. MM Kembla submitted that it provided evidence to the ADC in its response to SEF 580 dated 18 November 2021¹⁵ of the required adjustments to normal values for Hailiang Vietnam, to ensure a fair comparison between the domestic and export sales. MM Kembla stated that the ADC elected to disregard each matter raised by MM Kembla (and its more than 100 years' experience producing copper tube) in preference to the acceptance of information provided by Hailiang Vietnam in its Exporter Questionnaire Response and during the video verification with the exporter. MM Kembla contended that the normal values determined for Hailiang Vietnam did not reflect the full cost elements to fairly compare with the export prices for Hailiang Vietnam's sales to Australia during the investigation period.
48. Under this ground of review MM Kembla addressed the following issues or sub-grounds:
- i. Model control codes "(MCCs)" and International standards;
 - ii. Cleaning and capping costs
 - iii. Copper volatility
 - iv. Drawing thin
49. I will address (i) MCCs and International Standards and (iv) Drawing Thin, together. The reason for adopting this approach is that the physical characteristics of wall thickness ("WT") and outside diameter ("OD"), which relate to the process of "drawing thin" (the subject of sub-ground (iv)) is also a major factor in differing International Standards (the subject of sub-ground (i)). Sub-grounds (i) and (iv) are therefore closely related with overlapping arguments and submissions, and it seems appropriate and efficient to consider them together, to avoid repetition.

¹⁵ MM Kembla submission in response to SEF 580 dated 18 November 2021, pages 4 - 10.

i) “MCCs” and International Standards and ii) Drawing Thin

MM Kembla’s Arguments

50. MM Kembla stated that it concurred with the ADC that the goods manufactured by it possess “characteristics closely resembling” the goods exported to Australia from Vietnam. However, it submitted that the locally produced goods and the imported goods were not identical, and that it was therefore essential for fair comparison purposes, that the normal values assessed by the ADC for the goods sold in Vietnam be adjusted to align with the goods that were exported to Australia.
51. MM Kembla submitted that the normal values for Hailiang Vietnam as determined by the Commissioner in TER 580 were for generic copper tube that had been manufactured to a lower standard and possessed physical characteristics that involved a lower cost of production (and selling price) than the goods exported to Australia.
52. MM Kembla contended that the Commissioner failed to adjust normal values to account for the less stringent physical characteristics that are evident in Hailiang Vietnam’s domestic sales of copper tube. According to MM Kembla these physical differences included: product dimensions, product quality, copper content, product cleanliness and chemical composition. MM Kembla submitted that ultimately, the lower standards applicable in Vietnam resulted in a lower cost of production for the subject goods that, without appropriate adjustment, could not properly be compared with the goods exported to Australia (which are required to meet the AS/NZ Standards involving a higher cost of production).
53. MM Kembla submitted that there are varying product standards used in the Vietnamese local market due to the non-mandatory specification of copper tube sold in Vietnam. MM Kembla submitted that, in addition, copper tube is not predominantly used for plumbing applications, as found in the Hailiang Vietnam Exporter Verification Report, where the verification team found no domestic sales of certain models for plumbing applications and subsequent adopted surrogate models of the refrigeration MCCs. MM Kembla submitted that the reverse is true in Australia where copper tube is still one of the prominent materials used for plumbing in major construction works. Subsequently, MM Kembla contended that it is considered that

these goods are not interchangeable and cannot be considered 'like' across markets and applications where no local standard or requirement exists.

54. MM Kembla stated that a number of the physical differences were generated by the standard and that the Australian Standard (for the exported goods) differed greatly to the local Standard in Vietnam (for the domestic goods). MM Kembla provided in its application for review, examples of evaluation of the difference in standards. MM Kembla stated that it had further detailed to the ADC that the differences in the applicable standards for copper tube manufactured in Vietnam translated to differences in the costs of production of the goods sold domestically in both countries and that these differences included: (i) physical differences in applicable standards; (ii) safe working pressures; (iii) manufacturing wall thickness tolerances; (iv) manufacturing outside diameter ("OD") tolerance; and (v) Cleanliness of the tube.
55. MM Kembla referred to the commonly referenced standard by customers in Vietnam for refrigeration and air conditioning tube (ASTM B280) when compared to the Australian standard product (AS/NZS 1571). MM Kembla stated that whilst they share the same OD dimensions, the WT dimensions were different.¹⁶ MM Kembla further stated that the Vietnamese Standards are not mandatory whereas the Australian Standards are mandatory. It stated that in a circumstance where national product standards are non-mandatory and exist in an unregulated market, it is impossible to ascertain that the local market produces and sells like goods, as there is no reference comparison to a base set of requirements for that local market.¹⁷
56. MM Kembla also highlighted differences between the Refrigeration Tube Standard (AS1571) costs and price versus Plumbing Standard (AS1432) costs and price, which MM Kembla quantified and demonstrated that the variation in manufacturing costs (reflecting the capping and cleaning costs) resulted in a proportionate increase in price.¹⁸ MM Kembla also pointed out that different standards had

¹⁶ MM Kembla stated that there was little alignment with wall thickness variance, ranging between -9 and 59 per cent and on average the Australian standard product was 22 per cent thicker than the Vietnamese standard product. See Attachment 2 to MM Kembla's application for review, page 8.

¹⁷ See Attachment 2 to MM Kembla's application for review, pages 8 – 10.

¹⁸ See Attachment 2 to MM Kembla's application for review, page 11. Reference was also made to Confidential Attachment 2 (comparison of plumbing and refrigeration standard fabrication costs and sales prices) to MM Kembla's submission in response to SEF 580, dated 18 November 2021.

differing WT, pressure rating, cleanliness and other requirements, which had differing effects on fabrication costs.

57. MM Kembla also submitted that it had tested the imported tubes in a laboratory and that they did not comply with Australian standards.¹⁹
58. MM Kembla submitted that with approximately [REDACTED] per cent of total volume of Hailiang Vietnam's production being made to a higher and mandatory Australian standard, this would have little impact on the average MCC cost. MM Kembla emphasised the lack of detailed product costing by exporters, which is a blend of different products for different MCCs and within MCCs, with different standards for domestic and export products, making the comparisons unreliable and misleading.
59. MM Kembla contended that the ADC had not identified the extent of these physical differences, as required by the Manual. MM Kembla submitted that the verified MM Kembla MCC data outlined the extent of differences between standards, which was significant.²⁰ MM Kembla stated that it had provided detailed costings and summary data by MCC, that had been verified by the ADC, but the ADC had rejected its data in preference for the exporter's data which, by their own admission, did not have specific cost records for individual products to a specific standard or market. MM Kembla submitted that costs were all averages (for Hailiang Vietnam) that were allocated on a volume basis not on actual product cost basis. For example, MM Kembla noted that a small diameter and lower WT product requires a higher cost of manufacturing on a \$/tonne basis than larger diameter and larger wall thickness product, due to lower through put rates, which was completely ignored in this costing methodology, and also noted that it did not include all costs, such as capping and cleaning.²¹

¹⁹ It should be noted that the ADC did not consider the claims by MM Kembla of copper tube not meeting Australian Standards to be related to the issue of whether dumping and ensuing material injury is occurring. The ADC stated that claims of non-compliance do not fall within the scope of the remit of the ADC under the Act.

²⁰ Reference was made to Confidential Attachment 2 to MM Kembla's response to SEF 580 dated 18 November 2021.

²¹ MM Kembla outlined the allocation method applied to each cost item for Hailiang Vietnam (raw materials, manufacturing overheads and labour) in its response to SEF 580 dated 18 November 2021, with an extract reproduced in Table 9 of Attachment 2 of its application for review, page 12. Reference in this regard was also made to Section 6.1 of Hailiang Vietnam Verification Report, page 12.

60. MM Kembla stated that it was concerned by the lack of transparency and detail in TER 580 concerning the unit of measurement for cost and sales in the Hailiang Vietnam Exporter Verification report. It stated that it was understood that sales of copper tube were generally made on a “per length” basis, with costs typically measured on a \$ per kg (or tonne) basis. MM Kembla submitted that the Hailiang Vietnam Exporter Verification Report provided no details as to the unit of measurement for costs and/or sales, stating that if sales had been verified on a “per piece” basis, the conversion factors to arrive at a per tonne equivalent should be identified.²²
61. MM Kembla raised with the ADC the practice of Hailiang Vietnam ‘drawing thin’ its copper tube for domestic supply.²³ MM Kembla submitted that [REDACTED] [REDACTED] the option of buying the “lite” product with thinner wall thickness and lower copper content to reduce costs. MM Kembla submitted that the local standards in Vietnam are different to Australia, and the standards are not mandatory, with customers able to negotiate to buy tube using customer defined specifications. According to MM Kembla, customers are highly motivated to set their own WT specifications, well below the official product standards due to the high cost of copper as a percentage of total costs. MM Kembla submitted that Hailiang Vietnam demonstrated this reduced WT option in the export markets as well. According to MM Kembla the increased draw thin percentage was in the order of an additional [REDACTED] per cent saving in copper cost, and using the average copper price for July 2020 to December 2020 of US\$ [REDACTED]/t, an additional \$ [REDACTED]/t increase to normal value was required.²⁴
62. MM Kembla submitted that the Commissioner incorrectly accepted the Vietnamese exporter’s CTMS for all goods (i.e. domestic and exports) which reflected Hailiang Vietnam’s lower cost of production achieved by drawing thin.
63. MM Kembla contended that the Commissioner’s determination of normal value for Hailiang Vietnam did not take account of an adjustment required to normal value to

²² Attachment 2 to MM Kembla’s application for review, page 12.

²³ Reference was made to MM Kembla submission of 12 November 2021, in response to the submission by Hailiang Vietnam, page 7 – 8.

²⁴ See Confidential Attachment 2 to MM Kembla’s application for review, page 15 - 16.

permit a fair comparison between the domestic copper tube (that is drawn thin and meets lower Vietnamese standards) versus the exported goods (with a thickness that complies with Australian Standards and otherwise meets the higher Australian Standard). MM Kembla contended that the decision not to make adjustments for Standards (including drawing thin) was not the correct or preferable decision. MM Kembla concluded that the ADC's stance to ignore these material differences in physical attributes represented a failure of the Commissioner to correctly determine normal values for copper tube.

ADC's Position

64. In TER 580 the ADC stated that in determining the MCC structure, the ADC has regard to differences in physical characteristics that give rise to distinguishable and material differences in price. Further, it was stated that unit costs may also be taken into account in assessing differences in physical characteristics where the commission is reasonably satisfied that those cost differences affect price comparability.²⁵ The ADC stated that the MCC structure used by it in this investigation included a combination of domestic and export models in each MCC category, with each MCC containing a mixture of domestic and export models with similar prices and costs to one another. Therefore, according to the ADC, particular models with lower costs and selling prices were grouped with other models with similar costs and selling prices in each category. As a result, according to the ADC, the goods sold domestically with lower costs and prices are grouped in the same category as exported goods with the same or similar costs and prices. The ADC stated that it therefore considered that the MCC structure allowed for a proper comparison between domestic and exported goods, when calculating dumping margins.²⁶
65. The ADC stated that it had examined the specific models included in each MCC category and was satisfied that these contained both domestic and exported models. Further, the ADC stated that it had ensured that appropriate models were included within each MCC, using verified data from Hailiang Vietnam. The ADC stated that it had analysed the weighted average cost for each MCC used in the dumping margin calculations and compared these with the cost to produce each

²⁵ Reference was made to the Manual, page 48.

²⁶ See TER 580, page 12.

specific model within that MCC category. On each occasion, the ADC found that there was a variety of domestic and exported models which have the lowest and highest cost within each MCC and the weighted average cost closely aligned with the costs for each specific exported model. The ADC stated that it did not consider adjustments for differences in costs were necessary where the same MCCs were used to compare the domestic sales to the export sales, as it did not affect price comparability. On the basis of the above, the ADC was satisfied that calculating the cost to make using the MCCs, gives consideration to both domestic and export models and therefore, no adjustment to the normal value was required.²⁷

66. The ADC noted that each MCC was made up of multiple models, both domestic and export, and that the MCC structure therefore accounted for a difference in standards between goods. The ADC did not consider adjustments to be necessary to ensure price comparability.²⁸

Consideration in respect of (i) MCCs and International Standards and (iv) Drawing Thin

67. According to the Manual, s.269TAC(8) of the Act places a responsibility on the ADC, as part of its fact finding responsibility throughout an investigation, to consider adjustments. The ADC seeks relevant data and makes adjustments where evidence exists that a particular difference has affected price comparability. The Manual states that parties making adjustment claims also have a responsibility to provide the evidence in support, because this information is ‘normally’ in their possession. In the consideration of Ground 1 above, I referred to WTO jurisprudence that provides that while interested parties claiming adjustments are required to provide evidence in support of and to quantify their claim, there is also an affirmative information-gathering burden on the investigating authority to ensure a “fair comparison” and not impose an “unreasonable burden of proof” on the parties in question claiming the adjustment.²⁹ Mindful of this policy, it should be noted that in INV 580 it was MM Kembla, not the exporter, making the claim for adjustment, and that MM Kembla did

²⁷ TER 580, pages 27 – 28.

²⁸ TER 580, page 28.

²⁹ See WTO Panel Report, *Egypt - Definitive Anti-Dumping Measures on Steel Reinforcing bar from Turkey* (WT/DS211/R) at paragraph 7.352.

not have access to Hailiang Vietnam's confidential cost of production and sales data, relevant to the claims for adjustment.

68. MM Kembla made detailed submissions to the ADC during INV 580 relating to the differences between the goods sold on the domestic market to lower Vietnamese standards, and the exported goods required to meet the higher Australian standards. According to MM Kembla these physical differences, arising from the difference in International Standards included: product dimensions (such as, WT), product quality, copper content, product cleanliness and chemical composition. MM Kembla's detailed information on the differences was based on its own verified data and it outlined the extent of differences between the Vietnamese and Australian Standards, which it considered to be significant. The detailed costings and summary data, by MCC, that had been verified, included not only details of the physical differences but also quantification of the costing variances.³⁰ It was clear to me from MM Kembla's submissions that the costing variances were complex, since the differing dimensions resulting from differing standards were claimed to have dual and non-linear effects on costs. For example, it was shown that a small diameter and lower WT (drawn thin) product requires a higher cost of manufacturing (fabrication cost) on a \$/tonne basis, than a larger diameter and larger WT product, due to lower through put rates. On the other hand, a lower WT also meant a lower weight and therefore a lesser amount of copper, decreasing the input costs of copper, bearing in mind that copper constitutes a large percentage of the cost of the product.
69. It was apparent, that the product model mix of the MCCs was complex with different combinations and ranges of OD and WT (resulting from differing standards). This appeared to create large variances in characteristics in the MCCs, with differing effects on the weight and conversion costs (and therefore on total cost of production). The verified MM Kembla MCC data outlined the extent of differences between standards and its effect on costs, which MM Kembla considered to be significant.
70. The ADC adopted, what appeared to be, a rather broad approach to the establishment of MCCs. It had focussed on similarly costed and priced products

³⁰ See for example, Confidential Attachment 2 to MM Kembla's response to SEF 580 dated 18 November 1991, for details and quantification of differences.

being categorised in the same MCCs. While the ADC had stated in TER 580 that in determining the MCC structure, it had regard to differences in physical characteristics that give rise to distinguishable and material differences in price, I noted that it did not use Standards or WT (drawing thin) as key characteristics for establishing the MCCs. The ADC stated that it was satisfied that the MCC categories ensured that high cost exported models were compared with similar high cost models sold on the domestic market, and that in this way the MCC structure accounted for a differences in International Standards between goods (including WT or 'drawing thin). To substantiate its approach, the ADC stated it had analysed the weighted average ("WA") cost for each MCC used in the dumping margin calculations and compared these with the cost to produce each specific model within that MCC category, and found that the WA cost closely aligned with the costs for each specific exported model. The ADC noted that each MCC is made up of multiple models, both domestic and export and claimed that the MCC structure therefore accounts for a difference in standards between goods. The ADC was therefore not satisfied that such an adjustment was necessary.

71. I had some difficulty in understanding how the cost and price based approach adopted by the ADC, in formulating the MCCs, accounted for the very real physical differences related to different International Standards (such as, WT or 'drawing thin), bearing in mind that the differing dimensions resulting from differing standards had complex and non-linear implications for fabrication costs and input (copper) costs, respectively. These were described in detail, and in some instances quantified (or a methodology provided for quantification) by MM Kembla during the investigation. The ADC did not dispute or contradict MM Kembla's detailed submissions relating to differences arising from differing standards. In rejecting MM Kembla's claims the ADC merely referred to the MCC structure (based on similarly costed and priced products) that it considered appropriately accounted for the differences, and stated that it was not satisfied that such adjustments were necessary.
72. I considered that the ADC's rationale for not granting the adjustments, based on what it considered to be appropriated formulated MCCs, was inadequate. I noted that grouping similarly costed and priced models in MCCs may take into account certain physical differences that affected (in a linear way) the weight of the product, and therefore the amount of copper costs per unit. However, it was not apparent to

me how that methodology also took into account the effect of differences in dimension (arising from the Standard, such as WT) on manufacturing (or fabrication) costs, for example, relating to pressure, cleanliness and other standards, which had a more complex and non-linear effect on costs.

73. MM Kembla identified the exporter's per unit costing as being deficient, submitting that Hailiang Vietnam's costs were all averages that were allocated on a volume basis rather than on actual product cost basis, thereby while providing for per unit copper costs, it did not differentiate for fabrication costs associated with particular standard or dimension of the product. MM Kembla submitted that the Commissioner incorrectly accepted the Vietnamese exporter's CTMS for all goods. While not challenging or contradicting MM Kembla's submissions relating to Hailiang Vietnam's costing, the ADC failed to properly address them or further investigate the exporter's cost methodology, and the effect it might have had on formulating the MCCs, which were based on similarly costed models being grouped together.
74. I found MM Kembla's arguments and detailed submissions relating to the physical differences arising from the differing standards (and WT or drawing thin), as well as its submissions relating to the exporter's per unit costing, to be substantial and persuasive. Kembla claimed that it had provided the ADC with evidence sufficient to enable the ADC to: (i) positively determine that there are differences which affect price comparability; and (ii) to quantify those differences for the purposes of making the appropriate adjustments under s.269TAC(8). I considered that the ADC's rationale for not granting the adjustments, based on what it considered to be appropriated formulated MCCs, to be inadequate and without proper justification.
75. Mindful of the ADC's responsibility to consider adjustments, and the affirmative information-gathering burden mandated by WTO jurisprudence (and its own policy) to ensure a "fair comparison" referred to above, I consider that the ADC did not properly address and consider MM Kembla's detailed claims for appropriate adjustments relating to the physical differences arising from differing Standards (including WT) affecting costs and price comparability.
76. For all the above reasons, I consider that the ADC's decision not to make appropriate adjustments relating to International Standards (including WT or the

process of 'drawing thin') in the comparisons of normal value and export price, was not the correct or preferable decision.

ii) Cleaning and capping costs

MM Kembla's Arguments

77. MM Kembla submitted that the ADC demonstrated a lack of understanding of the production process and accepted the exporter's contention that cleaning is undertaken during the production process and is reflected in the production cost, which is blended and averaged across all products to all standards and different export and domestic markets, with varying levels of cleanliness required. MM Kembla contended that this was incorrect. In its submission in response to SEF 580 dated 18 November 2021, MM Kembla stated that the ADC confirmed at verification with Hailiang Vietnam that it "did not separately identify costs of capping, because its SAP system does not record that information routinely and the cost of capping is small". According to MM Kembla, the ADC concluded that, "the MCC category of capping has an immaterial effect on cost data and has no effect on price comparisons" and thereby removed the capping category from the MCC structure.³¹
78. MM Kembla acknowledged that some cleaning can be done in-line, that is, bendable (annealed) but only for smaller sizes, with larger products and hard drawn products requiring to go through a wash tank cleaning process. MM Kembla submitted that the Hailiang Vietnam manufacturing process is designed around the higher volume Vietnamese standard (ASTM B280) which does not have a mandatory requirement for product to pass cleaning tests. According to MM Kembla, such requirements are as agreed in the sales or purchasing contract between buyer and seller.³² MM Kembla submitted that such freedom to meet internal cleanness requirements does not exist in the Australian Standard (AS/NZS 1571) for refrigeration copper tube. MM Kembla stated in its application for review

³¹ See MM Kembla's submission in response to SEF 580 dated 18 November 2021, page 4 where reference was made to Paragraph 2.2.1 and Table 1 of the Verification Report of Hailiang Vietnam, page 5.

³² Reference was made to Section 4.2.3 of ASTM B280 which according to MM Kembla states that the Cleanness test option is available and shall be specified in the contract or purchase order when required.

that it provided the ADC with photos of the cleaning and capping process undertaken for its production of refrigeration copper tube.³³

79. MM Kembla submitted that it had provided detailed cleaning and capping costings to the ADC in both INV 580 and INV 557. MM Kembla pointed out that the issue was that Hailiang Vietnam did not accurately report “cleaning and capping” costs. MM Kembla stated that Hailiang Vietnam only referred to the cost of the cap and that the ADC accepted this item only in the costs for the relevant MCC, which MM Kembla pointed out was incorrect. MM Kembla also stated that it had robustly highlighted in its submissions in INV 557 and in its response to SEF 557,³⁴ as well as in the Exporter Briefing in INV 580, that the cleaning and capping costs for refrigeration copper tube was not an “immaterial” cost and that an adjustment to normal value was required to account for this cost differential between domestic and export sales. MM Kembla stated that the inclusion of the cap cost only falls significantly short of the actual adjustment required for the cost of this service.³⁵
80. MM Kembla submitted that it provided detailed cleaning and capping costings to the ADC, but that this was dismissed by the ADC with no explanation, other than agreeing with the exporter’s claims that capping costs were not a material component of costs. MM Kembla referred to the ADC’s finding that it was unable to identify a material difference in selling price between capped and uncapped copper tube for the verified exporters.³⁶ MM Kembla pointed out that the ADC had not visited a single copper manufacturing plant to verify that the process claimed by

³³ Reference was made to Confidential Attachment 1 of MM Kembla’s submission in response to SEF 580 dated 18 November 2021.

³⁴ MM Kembla’s submission to the ADC in INV 557 dated 14 May 2021, Document #023 of EPR 557 and MM Kembla’s submission in response to SEF 557 dated 4 October 21 and Confidential Attachment 7 thereto.

³⁵ SEE MM Kembla’s submission in response to SEF 580 dated 18 November 2021, page 4.

³⁶ MM Kembla had addressed this issue in INV 557 and in ADRP Review No.’s 145 – 150. MM Kembla had stated that the domestic markets were largely for refrigeration product (capped), with very little tube used for plumbing (uncapped), with the Australian market being the reverse, that is mainly plumbing products. According to MM Kembla this large, competitive and unregulated domestic market meant that ‘drawing thin’ was a way to substantially reduce costs, an explanation as to why capped products were cheaper in the domestic market than uncapped plumbing products. MM Kembla argued that lower pricing for refrigeration products is only possible through drawing refrigeration tube thinner, with substantial saving in copper cost, overshadowing the additional cleaning and capping costs. See Paragraph 2(iii) of the Conference Summary of the conference held on 27 May 2022 and Paragraph (iii) of Appendix A to the conference summary, during Review Panel Review No.’s 145 – 150.

exporters was correct, and further submitted that the ADC rejected the local industry's representations that are based on over 100 years of manufacturing.

81. MM Kembla stated that it was concerned by the ADC's apparent disregard for a reasonable standard of proof concerning the 'materiality' of individual items for which it was seeking adjustments to the exporter's normal value, in accordance with the Manual and ADA. MM Kembla contended that the ADC is required to assess when making a fair comparison between export price and normal value whether there are differences which affect price comparability. MM Kembla stated that it provided the ADC with evidence sufficient to enable it to: (i) positively determine that there are differences which affect price comparability; and (ii) to quantify those differences for the purposes of making the appropriate adjustments under s.269TAC(8).
82. MM Kembla referred to an example provided to the ADC for goods to comply with the Australian standard AS1571, and a requirement of the standard to be capped. Kembla submitted that it was unclear as to how the ADC could verify that the cost of capping, cleaning, labour and handling cost related to AS1571 tube was immaterial when all exporters confirmed that the cost is not included in the COP but treated as "packaging" or cleaning "during production" and simply adding the actual cost of the cap, which was not material. According to MM Kembla, the exporter's explanation dramatically undercosts the real cost of meeting the requirements of AS1571.
83. In summary, MM Kembla concluded that the cost of cleaning and capping or the difference in manufacturing to different standards was not fully validated and appreciated by the ADC and thus failed to make the appropriate adjustments to normal value for this material cost.

ADC's Position

84. The ADC stated that it verified actual capping costs for each specific product code sold by Hailiang Vietnam, throughout verification and confirmed that capping costs were not a material component of costs. Further, the ADC stated that it did not identify a material difference in selling price between capped and uncapped copper tube for the verified exporter, with the details of the analysis conducted by the

verification team outlined in the ADC's report on the verification of Hailiang Vietnam.³⁷

85. In response to MM Kembla's submissions on cleaning and capping costs during INV 580, the ADC had repeated its position that in determining the MCC structure, it had regard to differences in physical characteristics that give rise to distinguishable and material differences in price. The ADC stated further that unit costs may also be taken into account in assessing differences in physical characteristics where the ADC is reasonably satisfied that those cost differences affect price comparability. The ADC reiterated that the MCC structure used in this investigation included a combination of domestic and export models in each MCC category and that each MCC contained a mixture of domestic and export models with similar prices and costs. The ADC therefore considered that the MCC structure allowed for a proper comparison between domestic and exported goods when calculating dumping margins, without the necessity for adjustments.

Consideration

86. There would appear to be a substantial difference in the manner that MM Kembla and the exporter respectively treated cleaning and capping costs in their accounts and in their per unit costing. The ADC stated in TER 580 that it found that capping costs were not a material component of the exporters' costs, with capping costs making up a minimal amount of the total cost to make. The ADC stated that it was also unable to identify a material difference in selling price between capped and uncapped copper tube for the verified exporter, the suggestion being that any differences in costs did not affect price comparability.
87. MM Kembla vigorously disputed that capping costs were immaterial and provided evidence of the MM Kembla's own verified costs relating to capping and cleaning, and the proportionate affect it had on pricing. It stated that the ADC did not have sight of the full capping and cleaning costs of the exporter, which extended beyond the cost of the actual caps that the ADC referred to, for example, secondary cleaning costs, labour costs and additional handling. MM Kembla stated that it had demonstrated during the investigation that the capped refrigeration products sold in Australia (compliant to Australian standards) have a higher standard cost, with the

³⁷ Document #009 of EPR 580.

selling price proportionately higher when compared to uncapped plumbing product (compliant to the Australian standard), which is not cleaned to the same standard. This was based on MM Kembla's detailed verified information submitted to the ADC.³⁸

88. MM Kembla's submissions during this investigation and during INV 557, in regard to this issue, were detailed and based on verified costing information, and they were not disputed in any way by the ADC. MM Kembla's claimed the discrepancy in the exporter's accounts that did not show increased costs for cleaning and capping, was due to the exporters' costing systems not separately capturing these costs with all products having an average fabrication costs. MM Kembla based its view in this regard on the statements in the Exporter Verification Report and other public documents, and claimed in various submissions that the exporters did not have a detailed per unit cost calculation for each model, as was the case with MM Kembla. Since the exported products would have been required to meet the same Australian standards as MM Kembla, the discrepancy in the exporters' per unit cleaning and capping costs, should have raised questions for the ADC as to whether the exporters' costing system effectively captured the specific costs, as reasonably argued by MM Kembla. The ADC did not appear to follow-up on this line of enquiry.
89. The ADC appeared to only superficially address MM Kembla's detailed submissions and costings differences, such as focusing on the cost of the cap used by Hailiang Vietnam for capping, to come to the conclusion that capping costs were minimal, without considering the other elements of the cleaning and capping costs referenced by MM Kembla. The ADC also did not address the possibility put forward by MM Kembla in INV 557 that the costs of cleaning and capping were overshadowed by the savings on copper through the practice of drawing refrigeration tube thinner, in the large competitive and unregulated refrigeration market in Vietnam, as suggested by MM Kembla, leading to similar prices for capped and uncapped products on the Vietnamese domestic market. The deficiencies of not taking WT (or drawing thin) into consideration in forming the MCCs or making relevant adjustments in relation to fabrication costs (which are also relevant in this sub-ground of review) have been discussed above.

³⁸ See for example, Attachment 2 to MM Kembla's application for review, pages 12 – 13 and MM Kembla's submission in response to SEF 580 dated 18 November 2021, page 4.

90. For all the above reasons I consider that the ADC's decision that it is satisfied that an adjustment to normal value for differences in capping and cleaning costs is unnecessary, was not the correct or preferable decision.

iii) Copper volatility

MM Kembla's Arguments

91. In its application for review MM Kembla provided a detailed outline of the volatility of copper during the 2020 investigation period. MM Kembla included in its application for review, a table detailing monthly movements in the LME copper spot price, that was included in its response to SEF 580 dated 18 November 2021. MM Kembla stated that the relevant table demonstrated the volatility impact on copper pricing that was evident during the investigation period. MM Kembla submitted that the inter-month volatility was very significant and that it further supported why it was not reasonable to compare domestic sales with export sales at the date of invoice, even if the timing difference was less than 3 months, as suggested by the ADC. MM Kembla stated that to suggest that this was not significant or material was incorrect when the economics of manufacturing and selling copper tube was that the raw material (copper) accounted for more than 90 per cent of the selling price.³⁹
92. MM Kembla referred to its submission of 12 November 2021, in response to the Hailiang Vietnam submission of 15 October 2021, and highlighted the significant decline in the international copper price in early 2020. Further, MM Kembla submitted that the copper price demonstrated significant volatility by declining as much as ■ per cent.
93. MM Kembla submitted that the ADC should have concluded that: (i) the volatility in the copper price during the period of investigation was significant and material; (ii) the timing of when the copper price is set has a material impact on normal values and export prices (as evidenced by ■ export prices to Australia); and (iii) an adjustment to normal value for the different copper benchmark price between export and domestic sales was required.

³⁹ See Confidential Attachment 2 to MM Kembla's application for review, pages 13 – 15.

94. MM Kembla submitted that separately to the above, it had analysed the available export data for Vietnam copper tube during the investigation period. MM Kembla submitted that the analysis demonstrated that for the subject goods only, the monthly variation in the FOB price by shipment within the same month ranged between ■ per cent to ■ per cent, further demonstrating that the variation in pricing due to the copper benchmark and timing of when the copper price is fixed has had a material impact on ■ exports when using the invoice or FOB date within the same month.⁴⁰
95. MM Kembla contended that in order to accurately compare export sales prices with domestic prices the ADC was required to make due allowance under s.269TAC(8) to address differences in copper pricing between the two markets.

ADC's Position

96. The ADC addressed MM Kembla's claim relating to copper volatility in the main part in its discussions relating to date of sale and the timing difference between order placement and date of invoice.⁴¹
97. The ADC considered the timing difference between the order placement date and invoice date for both the domestic and export sales. The ADC stated that the evidence before it was that the timing difference between these dates for exported copper tube was not significant and this difference was not many months as submitted by MM Kembla. The ADC did not consider that domestic and export sales for the exporters under investigation were made on different terms.⁴²
98. The ADC stated that in order to make the adjustment as suggested by MM Kembla, it would need to be satisfied that the adjustments were necessary for price comparability, such that the normal value cannot be calculated under s.269TAC(1) and the export price cannot be calculated under s.269TAB(1). The ADC stated that

⁴⁰ See Confidential Attachment 2 to MM Kembla's application for review, page. Reference was made to Confidential Attachment 4 of MM Kembla's submission in response to SEF 580. It was pointed out that the information was supplied to the ADC in its original application and more recently in MM Kembla's submission in response to the Hailiang Vietnam exporter verification report and Hailiang Australia's Importer Verification Report.

⁴¹ See discussions under Ground 1 above.

⁴² TER 580, pages 24 – 25 and page 27. Reference was made to Confidential Attachment 1 to TER 580.

it had not been provided with any evidence to suggest that copper price volatility affected price comparability between domestic and export markets, and was satisfied that normal values can be calculated pursuant to s.269TAC(1) and export prices pursuant to s.269TAB(1).⁴³

99. The ADC did not consider fluctuations in copper prices in the investigation period to be evidence of order placement date better reflecting the date of sale, and was not satisfied that an adjustment under s.269TAC(8) is warranted.⁴⁴

Consideration

100. In order for an adjustment for copper volatility to be granted, it would require evidence demonstrating that copper price volatility affects price comparability between domestic and export markets. This is in accordance with the ADC's policy as set out in the Manual, and which also reflects WTO law, that due allowance be made in each case on its merits, for differences which "affect price comparability".
101. In making this claim for adjustment, MM Kembla focussed on the difference in timing for delivery in the domestic and export markets. MM Kembla submitted that the movement in copper price from the date of order placement to invoice can be substantial and, given the longer lead time (up to three months) for export sales, it contended that it was not reasonable to compare domestic sales with export sales at date of invoice, due to the volatility in the copper price that evolved over this period.
102. The evidence before the ADC led it to conclude that the timing difference for exported copper tube was substantially less than the 3 months submitted by MM Kembla. I reviewed the relevant Worksheet of Confidential Attachment 1 to TER 580 and confirmed the correctness of the ADC's finding in this regard, that is, the average timing difference between order confirmation and invoice date for exported copper tube was substantially less than 3 months.⁴⁵ This detracted from MM

⁴³ TER 580, page 27.

⁴⁴ TER 580, pages 24 - 25. Reference was made to Confidential Attachment 1 to TER 580.

⁴⁵ See Worksheet entitled, 'Difference in Sales Terms' of Confidential Attachment 1 to TER 580. A review of the Worksheet indicated that the average difference between the order confirmation date and the invoice date for the export sales samples was [REDACTED] days and for the domestic sales samples was [REDACTED] days, with the average lead time for the export sales samples being only [REDACTED] days longer than for domestic sales.

Kembla's argument that, "given the longer lead time (up to three months) for export sales, it is not reasonable to compare domestic sales with export sales at date of invoice due to the volatility in the copper price that evolves over this period".

103. I also considered that it had not been demonstrated that there was, consistently, a material difference between the price of copper applicable to production of domestic products and the production of exported products, at the time of comparison, a requirements for an adjustment claim to be successful.

104. In order to make the adjustments as suggested by MM Kembla, the ADC stated that it would need to be satisfied that these adjustments were necessary for price comparability, such that the normal value could not be calculated under s.269TAC(1) and the export price could not be calculated under s.269TAB(1). The ADC stated that it had not been provided with any evidence to suggest that copper price volatility affects price comparability between domestic and export markets.

105. Although MM Kembla provided evidence of copper price volatility over the investigation period, I do not consider that it provided evidence demonstrating that copper price volatility affected domestic sales and export sales substantially differently. I also do not consider that it was demonstrated that any difference in the effect of copper pricing on domestic and export sales actually affected the setting of prices (that is, that price comparability between domestic and export markets was affected), in accordance with the requirements for an adjustment in the Manual and in accordance with WTO law. The very purpose of hedging, a practice repeatedly stated to be prevalent in this industry, is to ensure that pricing and profitability is not adversely affected by copper price volatility. The practice of hedging by the exporter (as alleged by MM Kembla) therefore seems to me, to detract from the contention that the copper price volatility affected the setting of prices differently for the domestic and export prices.

106. For all the reasons discussed above I consider that the decision to not make adjustments for copper volatility was the correct or preferable decision.

Summary of Findings under Ground 2 - Normal Value Adjustments

107. The following is a summary of the findings of the sub-grounds of review relating to normal value adjustments under this ground of review:

- The decisions relating to the following sub-grounds of review were not found to be the correct or preferable decisions: (i) MCCs and International Standards; (ii) Capping and Cleaning costs; and (iv) Drawing Thin.
- The decisions relating to the following sub-grounds were found to be the correct or preferable decisions: (iii) Copper volatility.

Ground 3: Arm's length sales between Hailiang HK and Hailiang Australia and export price

MM Kembla's Arguments

108. MM Kembla referred to the decisions in TER 580 that: (i) the ADC was not satisfied of the arms length nature of the transactions between the exporter, Hailiang Vietnam, and the Hong Kong based affiliate trader, Hailiang HK, and (ii) the ADC was satisfied that sales between Hailiang HK and Hailiang Australia were at arms-length. MM Kembla challenged the latter decision and considered that the finding of the arms length nature of the export sales between Hailiang HK and Hailiang Australia was not the correct or preferable decision.

109. MM Kembla also contended that the ADC's decision that a deductive export price assessment was not "necessary" and its decision to calculate the export price for Hailiang Vietnam using "the price paid by the importer less an amount of HK Hailiang's SG&A costs and other prescribed deductions for costs arising after exportation",⁴⁶ was not the correct or preferable decision.

110. MM Kembla submitted that the existence of rebates paid by the exporter to Australian customers along with the fact that the selling price from Hailiang Vietnam to Hailiang HK did not recover all costs, categorised the export sales by Hailiang Vietnam as 'non arms length'. MM Kembla stated that the ADC rejected MM Kembla's representations on these points and maintained that the selling price from Hailiang HK to Hailiang Australia could be considered arms-length, which MM Kembla considered to be incorrect.

⁴⁶ Reference was made to TER 580, page 22.

111. MM Kembla submitted that it had [REDACTED] and referred to evidence that it had submitted, relating to off-invoice rebates, both during INV 557 and during INV 580.⁴⁷ MM Kembla stated that the evidence indicated that [REDACTED]
[REDACTED]
[REDACTED]⁴⁸

112. MM Kembla stated in its response to SEF 580 of 18 November 2021, that it was evident that the off-invoice rebates represented a consideration other than price and that at least one of the provisions of s.269TAA(1)⁴⁹ had been met. According to MM

⁴⁷ The evidence referred to was included in both MM Kembla's applications for measures in INV 557 and INV 580, in the Confidential Exporter Briefing for Zhejiang Hailiang provided by MM Kembla to the ADC in INV 557 and in the Confidential Exporter Briefing in INV 580, as well as in MM Kembla's response to SEF 557 of 4 October 2021. The evidence was also incorporated by reference into MM Kembla's response to SEF 580 dated 18 November 2022. The evidence included:

(1) [REDACTED]
[REDACTED] See Confidential Attachment 9 to MM Kembla's response to SEF 580 dated 18 November 2021.]

(2) [REDACTED] See Confidential Attachment 10 to MM Kembla's response to SEF 580 dated 18 November 2021.]

(3) [REDACTED] See Confidential Exporter Briefing for Zhejiang Hailiang in INV 557, page 4, incorporated by reference into MM Kembla's response to SEF 580 dated 18 November 2021.]

[REDACTED]
[REDACTED]
[REDACTED] See MM Kembla's submission to the ADC in TER 557 dated 4 October 2021, page 11 and Confidential Attachment 1 thereto, "(1a – 1e) – Deductive Export Price", Worksheets [REDACTED]
[REDACTED] incorporated by reference into MM Kembla's response to SEF 580 dated 18 November 2021.]

⁴⁸ See MM Kembla's response to SEF 580 dated 18 November 2022, page 11.

⁴⁹ Section 269TAA(1) of the Act states:

"For the purposes of this Part, a purchase or sale of goods shall not be treated as an arms length transaction if:

- (a) There is any consideration payable for or in respect of the goods other than their price; or
- (b) The price appears to be influenced by a commercial or other relationship between the buyer, or an associate of the buyer, and the seller, or an associate of the seller; or
- (c) In the opinion of the Minister the buyer, or an associate of the buyer, will, subsequent to the purchase or sale, directly or indirectly, be reimbursed, be compensated or otherwise receive a benefit for, or in respect of, the whole or any part of the price."

Kembla, a further requirement, identified in s.269TAA(1)(b), was also met as the selling price between Hailiang Vietnam and HK Hailiang clearly affected the selling price as it was determined at less than full cost recovery. Further, according to MM Kembla, it was also not clear how the ADC satisfied itself that the rebates were not evidence of a 'compensatory arrangement' for the purposes of s.269TAA(1)(c). MM Kembla submitted that the ADC's acceptance that the selling price from HK Hailiang to Hailiang Australia was arms length, was incorrect.

113. Further, MM Kembla stated that there was a lack of clear explanation by the ADC as to how it satisfied itself that the transactions between the related parties were the result of 'real bargaining' as described in the Dumping Manual – i.e. considering: (i) Whether or not negotiation has taken place between buyer and seller; (ii) The manner in which the prices were determined as a result of that negotiation; (iii) Whether prices are comparable to those arrived at by parties at arm's length; and (iv) Whether the margins made by the transaction are comparable to those made by parties at arms length.⁵⁰

114. MM Kembla stated that it disagreed with the ADC's contention that, "that off-invoice rebates have been considered in its assessment of the arms-length nature of transactions and in profitability calculations of the importer".⁵¹ MM Kembla again referred to the evidence provided to the ADC regarding rebates [REDACTED]

115. MM Kembla contended that payment of off-invoice rebates rendered selling prices between Hailiang HK and Hailiang Australia non arms length. MM Kembla stated that it viewed the decision as incorrect and not the preferable decision. It submitted that the ADC refused to consider MM Kembla's representations that Hailiang Australia's selling prices were not arms length, preferring instead to examine only whether the selling price from HK Hailiang to Hailiang Australia was recovered in Hailiang Australia's customer selling prices. MM Kembla contended that the ADC's methodology failed to consider the full effects of the export transactions from the manufacturer (Hailiang Vietnam) via its related-party trader (Hailiang HK), and related party Australian importer (Hailiang Australia).

⁵⁰ See MM Kembla submission in response to SEF 580 dated 18 November 2021, pages 11 – 12.

⁵¹ TER 580, page 22.

116. MM Kembla contended that, by virtue of the off-invoice rebates and the below cost selling price from Hailiang Vietnam to Hailiang HK, the export selling prices for goods manufactured by Hailiang Vietnam to Australia were non-arms length and the decision was therefore, not the correct or preferable decision.

ADC's Position

117. The ADC stated in TER 580 that it assessed the 'arms length' nature of each stage of the importation process. The ADC stated that it considered that the price between Hailiang Vietnam and Hailiang HK appeared to be influenced by a commercial or other relationship between the buyer and the seller.⁵² Further, the ADC considered that Hailiang HK's profit margin in relation to these sales was insufficient to cover its selling, general and administration (SG&A) expenses. Therefore, the commission concluded that the transactions between Hailiang Vietnam and Hailiang HK were not 'arms length' transactions.⁵³

118. The ADC stated In respect of Hailiang HK's sales of the goods to Australia during the investigation period, to related and unrelated customers, it considered the sales to be 'arms length', as it found no evidence that: (i) there was any consideration payable for, or in respect of, the goods other than the price (ii) the price appeared to be influenced by a commercial or other relationship between the buyer, or an associate of the buyer, and the seller, or an associate of the seller, and (iii) the buyer, or an associate of the buyer, was directly or indirectly reimbursed, compensated or otherwise receive a benefit for, or in respect of, the whole or any part of the price.⁵⁴

119. The ADC stated that it did not consider that a deductive export price calculation was necessary where transactions are found to be 'arms length' between the exporter and importer. The ADC also confirmed that off-invoice rebates were considered in its assessment of the arms-length nature of transactions and in profitability calculations of the importer.⁵⁵

⁵² Reference was made to s.269TAA(1)(b).

⁵³ TER 580, page 21.

⁵⁴ Reference was made to s. 269TAA(1).

⁵⁵ TER 580, page 22.

120. In respect of the export sales of the goods to Australia by Hailiang, the ADC found that the importer had not purchased the goods from the exporter, therefore, export prices could not be determined under s.269TAB(1)(a) or 269TAB(1)(b). The ADC recommended that the export price be calculated under s.269TAB(1)(c) having regard to all the circumstances of the exportation. Specifically, the ADC recommended that the export price be calculated based on the price paid by the importer less an amount for Hailiang HK's SG&A costs and other prescribed deductions for costs arising after exportation. The ADC was satisfied of the 'arms length' nature of the transactions between Hailiang HK and the importers, however, was not satisfied of the 'arms length' nature of the transaction between Hailiang Vietnam and Hailiang HK.⁵⁶

121. The ADC stated further that the verification team compared Hailiang HK's unit prices of the goods to both related and unrelated customers, and this analysis did not suggest that prices were influenced by the relationship between Hailiang HK and Hailiang Australia. The ADC stated that additionally, the ADC examined MM Kembla's claims that the ADC had not undertaken the appropriate analysis of FOB export prices. The ADC confirmed that the analysis of export FOB prices from Hailiang to Hailiang HK was conducted and these were compared with, and matched, the ABF import database.⁵⁷

Consideration

122. This ground of review focussed on, (1) whether the ADC had taken into consideration off- invoice rebates paid by Hailiang Vietnam (or its related-party trader, Hailiang HK), to its Australian customers, in determining that it was "satisfied" of the arms length nature of export sales between Hailiang HK and the related importer, Hailiang Australia, and other Australian customers, and (2) the correctness of the ADC's calculation of the export price, based on Hailiang Australia's ability to recover costs and its profitability.

123. MM Kembla repeatedly submitted that it had provided evidence to the ADC in INV 557 and INV 580 of off-invoice rebates paid [REDACTED] [REDACTED] which it stated demonstrated that the export selling prices were non-

⁵⁶ TER 580, page 22.

⁵⁷ TER 580, page 21 - 22.

arms length and that the decision was, therefore, not the correct or preferable decision. MM Kembla stated that it was not clear how the ADC satisfied itself that the information relating to rebates provided by MM Kembla was not considered evidence of a 'compensatory arrangement' for the purposes of s.269TAA(1)(c). Further MM Kembla had stated that there was a lack of clear explanation by the ADC as to how it satisfied itself that the transactions between the related parties were arms length.

124. I noted that the ADC had simply confirmed in TER 580 that "off-invoice rebates were considered in its assessment of the arms-length nature of transactions and in profitability calculations of the importer," without further explanation and without reference to the rebate evidence submitted by MM Kembla, which was, however, not refuted in any way. I reviewed the Hailiang Australia's Importer Verification Report and could find no mention of off-invoice rebates or any indication that off-invoice rebates were considered in the ADC's assessment of the arms-length nature of transactions, as stated in TER 580. Upon reviewing Confidential Attachment 3 to Hailiang Australia's Importer Verification Report, (which included Hailiang Australia's profitability assessment for TER 580), I also noted that there was no indication that the profitability assessment of Hailiang Australia took into account any off-invoice rebates, in determining the profitability for Hailiang Australia, as stated in TER 580, in the passage referred to above.

125. I was concerned as to whether the ADC fully investigated MM Kembla's claims relating to whether rebates were paid by Hailiang HK to its Australian customers, as the ADC did not appear address the relevant submissions in TER 580 or SEF 580. I noted that during a conference held on 7 June 2022, in respect of Review Panel Review No.'s 146 – 150 (which was a review of the termination decisions in TER 557), the ADC had pointed out that the evidence submitted to the ADC in that investigation (being the same evidence as submitted in INV 580) by MM Kembla [REDACTED]

[REDACTED]

[REDACTED] On reviewing the relevant evidentiary information, I confirmed that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] It was therefore not clear to me why the ADC was not more proactive in

following up on the evidence submitted and further investigating the issue of rebates in INV 580. I am reminded of the WTO jurisprudence that provides that while interested parties are required to provide evidence in support of their claims, there is also an affirmative information-gathering burden on the investigating authority, and a requirement that the authority, “shall not impose an unreasonable burden of proof” on the parties in question making the claims.⁵⁸ It seemed to me that there was sufficient information submitted by MM Kembla, that in my view warranted further inquiry as to whether rebates were paid to Australian customers.

126. For all the reasons discussed above, I consider that the Commissioner’s decision as to his satisfaction concerning the profitability of Hailiang Australia and the related finding of the arms length nature of the export sales between Hailiang HK and Hailiang Australia, was not the correct or preferable decision.

Ground 4: The determination relating to material injury is not the correct or preferable decision

MM Kembla’s Arguments

127. The ADC found that during the period of investigation the goods exported to Australia from Vietnam were either, not dumped (Hailiang Vietnam) or the dumping margin was less than 2 per cent (uncooperative exporters). As a result, the ADC terminated the investigation under s.269TDA(1)(b)(i) and (ii). The ADC therefore did not conduct an analysis of injury and causal link in TER 580.

128. MM Kembla submitted that the Commissioner’s decision to terminate the dumping investigation under s.269TDA(1)(b)(i) and (ii) was premised on the ADC’s finding that exports of copper tube from Vietnam were not exported to Australia at dumped prices. MM Kembla submitted that the Commissioner had incorrectly determined normal values and export price for Hailiang Vietnam under Grounds 1, 2 and 3 and that once corrected and dumping was found to occur, the Commissioner would have conducted an analysis relating to material injury and causation.

⁵⁸ See WTO Panel Report, *Egypt - Definitive Anti-Dumping Measures on Steel Reinforcing bar from Turkey* (WT/DS211/R) at paragraph 7.352.

129. MM Kembla submitted therefore that the decision not to conduct an analysis of whether the Australian industry suffered material injury from the dumped imports was not the correct or preferable decision.

ADC Position

130. In TER 580, the Commissioner terminated the investigation as it related to:

- Hailiang Vietnam, in accordance with s.269TDA(1)(b)(i), on the basis that no dumping was found to have occurred during the investigation period;
- Uncooperative exporters from Vietnam, in accordance with s.269TDA(1)(b)(ii), on the basis the dumping margin was less than 2 per cent.

The ADC therefore did not conduct an analysis of material injury and causation.

131. The ADC did not comment further on this ground of review.

Consideration

132. In the application for review, MM Kembla challenged the Termination Decisions under s.269TDA(1)(b)(i) and (ii), based on various grounds of review, including a number of grounds (or sub-grounds) of review relating to normal value, export price and dumping margins.

133. MM Kembla contended that the ADC's decision not to conduct an analysis of material injury and causation was premised on the ADC's findings that exports from Vietnam were not dumped or dumped at de minimus levels. MM Kembla submitted further that had the Commissioner correctly determined normal values and export prices for Vietnamese exporters, that adequately considered Grounds 1, 2 and 3 of this review, the Commissioner could not have reached the conclusion that he did in relation to material injury.

134. I have found that the Commissioner's decision was not the correct or preferable decision in respect of the following grounds (and sub-grounds) of review:

- Ground 2: Determination of Normal Value in respect (i) MCCs and International Standards; (ii) Capping and Cleaning costs, and (ii) Drawing Thin.
- Ground 3: Decision concerning the export price and profitability of Hailiang Australia and the arms length nature of the export sales between Hailiang HK and Hailiang Australia.

Therefore the decisions to terminate the dumping investigation under s.269TDA(1)(b)(i) and (ii), are revoked.

135. Under s.269ZZT(2)(a) of the Act, the investigation related to the decisions under s.269TDA(1)(b)(i) and (ii), therefore resume.

136. In revoking the decisions under s.269TDA(1)(b)(i) and (ii), I am not making a finding that the Vietnamese exporters are dumping or whether the ADC should conduct an analysis of material injury and causation. That will be a matter for the ADC to decide in making its report to the Minister. Therefore, it follows that I am unable to make a decision in accordance with MM Kembla's Ground 4, as to whether the decision in TER 557 not to conduct an analysis of material injury and causation, was the correct or preferable decision.

Summary of Findings

137. The decisions relating to the following grounds and sub-grounds of review were found to be the correct or preferable decisions:

- Ground 1: Date of sale.
- Ground 2: Determination of Normal Value in respect of: (iii) Copper volatility.

138. The decisions relating to the following grounds and sub-grounds of review were found not to be the correct or preferable decisions:

- Ground 2: Determination of Normal Value in respect of: (i) MCC and International Standards (ii) Capping and Cleaning costs; and (iv) Drawing Thin.

- Ground 3: Decision concerning the export price and profitability and the related finding of the arms length nature of the export sales

139. I was unable to make a decision in accordance with Ground 4 relating to material injury.

Conclusions

140. Pursuant to s.269ZZT of the Act and for the reasons given above, I consider that the Commissioner's termination decisions made under s.269TDA(1)(b)(i) and (ii) of the Act, were not the correct or preferable decisions and are revoked.

141. Under s.269ZZT(2)(a) of the Act, the investigation that is related to the decisions under subsections 269TDA(1)(b)(i) and (ii), therefore resumes.

142. Interested parties may be eligible to seek a review of this decision by lodging an application with the Federal Court of Australia, in accordance with the requirements in the *Administrative Decision (Judicial Review) Act 1977*, within 28 days of receiving notice.



Leora Blumberg
Panel Member
Anti-Dumping Review Panel
4 July 2022